

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-O-14751
)	
SYDNEY KEYTH ERICSON)	DECISION
)	
Member No. 50457)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Respondent Sydney Keyth Ericson was charged with three counts of misconduct in a single client matter. Respondent failed to participate in this case either in-person or through counsel and his default was entered. The State Bar was represented by Deputy Trial Counsel Elina Kreditor. The court finds by clear and convincing evidence that respondent is culpable of the charged violations. In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be suspended for two-years, execution of that suspension be stayed, and that he be suspended for a minimum of 90 days. He is to remain suspended until the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

PROCEDURAL HISTORY

The notice of disciplinary charges (NDC) in this case was filed on November 16, 2009, and was properly served on respondent on the same date. Respondent did not file an answer or otherwise participate in the case and his default was entered on January 28, 2010.¹ The matter

¹ As detailed in the declaration attached to the State Bar's motion for entry of default, respondent spoke to the Deputy Trial Counsel both before and after the filing of the NDC and therefore had actual knowledge of the case. (See *Jones v. Flowers* (2006) 547 U.S. 220.)

was taken under submission for decision on February 22, 2010, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline.

FINDINGS AND CONCLUSIONS

Pursuant to rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on January 5, 1972, and has been a member since then.

In July 2007, Leah Dixon (Dixon) employed respondent to represent her in divorce proceedings for a fee of \$5,000, which Dixon paid to respondent. In late August 2007, respondent filed a petition for dissolution on Dixon's behalf. In October 2007, following mandatory mediation ordered by the court, the parties entered into a written stipulation regarding custody, child support and visitation. The divorce proceedings were not complete at this point and required further action by respondent. In December 2007, Dixon attempted to reconcile with her husband and requested that respondent place her case on hold. In May 2008, Dixon called respondent's office and spoke to one of respondent's employees, indicating that she would like to proceed with the divorce. Respondent did not return Dixon's call. Dixon thereafter called respondent's office several times and left numerous voicemail messages, none of which were returned. Respondent did not complete Dixon's divorce proceedings. In January 2009, Dixon wrote a letter to respondent requesting an accounting of the \$5,000 she paid and that her case file be provided to her new counsel, John H. Smith (Smith). Neither Dixon nor Smith received a response to this letter.

By failing to respond to Dixon's telephone calls and her letter, respondent failed to respond to the reasonable status inquiries of a client in violation of Business and Professions

Code section 6068 subdivision (m) as charged in count one of the NDC. By failing to release promptly upon termination of employment Dixon's file to Dixon or Smith, as Dixon requested, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1) as charged in count two of the NDC. By failing to promptly render, as requested by a client, an accounting of the \$5,000 Dixon paid to respondent for legal services, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on one prior occasion. By order filed December 24, 2008, the Supreme Court suspended respondent from the practice of law for two years, stayed execution of the suspension and placed respondent on probation for three years on conditions, including 30 days actual suspension. (Supreme Court case no. S167777; State Bar case no. 06-O-11414.) In a single client matter, respondent stipulated that he obtained an ownership, possessory, security or other pecuniary interest in the client's property without complying with the requirements of Rules of Professional Conduct, rule 3-300, and thereby willfully violated that rule. The misconduct in this prior case was mitigated by respondent's then 35 years of practice without discipline and his candor and cooperation with the State Bar during the investigation and discipline proceeding, and was aggravated by harm to the client in that there was a delay in the client receiving her share of a settlement.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std 1.3, Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.)

In determining the appropriate level of discipline, the court looks first for guidance to the Standards for Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, tit. IV; hereafter Standards). Several standards apply here, including standards 1.6 (imposing the most severe of two or more applicable sanctions), 1.7(a) (degree of discipline in present case should be greater than the discipline imposed in prior case), 2.2(b) (minimum three months' actual suspension for violation of rule 4-100), 2.4(b) (reproval or suspension, depending upon extent of misconduct and degree harm to client for violation of § 6068, subd. (m)), and 2.10 (reproval or suspension, depending upon extent of misconduct and degree of harm to client, for other unspecified violations).

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains “grave doubts as to its propriety.” (*In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for the imposition of discipline, there is “no reason to depart from them in the absence of a compelling reason to do so. ([Citation].)” (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In the instant matter, respondent has been found culpable of failing to communicate with his client, failing to return the client’s file as requested by the client and failing to render an accounting to the client regarding the \$5,000 fees the client paid him. This misconduct is aggravated by respondent’s prior discipline. Of particular concern to this court is respondent’s failure to participate in this disciplinary proceeding. Respondent’s failure to participate leaves the court without any understanding as to the underlying cause or causes for respondent’s

misconduct or from learning of any mitigating circumstances which would justify this court's departure from the discipline recommended by the standards.

In its brief on culpability and discipline the State Bar recommends that respondent be suspended from the practice of law for three months. In support of its recommendation, the State Bar cites standard 2.2(b), *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, and *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608. In view of this case law, the misconduct in this case, respondent's prior discipline and his failure to participate, the court finds no compelling reason to depart from the discipline suggested by standard 2.2(b).

RECOMMENDATION

The court recommends that respondent Sydney Keyth Ericson be suspended from the practice of law in California two years, execution of that period of suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 90 days. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

If respondent remains suspended for two years or more, it is further recommended that respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), before his suspension will be terminated. (Rules Proc. of State Bar, rule 205(b).)

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners

within one year after the effective date of the discipline imposed herein or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

The court also recommends that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Failure to do so may result in disbarment or suspension.

It is further recommended that (1) costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment; and (2) that respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment be enforceable as provided under Business and Professions Code section 6140.5.

Dated: March _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court